Supreme Court, U.S.
FILED

96 410 SEP 9 1996

OFFICE OF THE CLERK

No. 94-1

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1996

APPLE GATE,
Petitioner,

vs.

MARVIN RUNYON,
POSTMASTER GENERAL, et al.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

Richard Dangler
Counsel of Record
3112 "O" Street
Sacramento, CA 95816
Tel: (916) 737-3166

September 1, 1996

33pp

QUESTIONS PRESENTED

Does res judicata bar a claim brought by a pro per petitioner whose requests to present witnesses and evidence to support his earlier claim were denied?

Are a pro per petitioner's due process rights violated where his request to present evidence supporting his claim that his employment with the U.S. Postal Service was terminated in retaliation for his disclosure of unlawful practices was denied?

PARTIES TO PROCEEDINGS

Petitioner:

APPLE GATE

Respondents:

MARVIN RUNYON,Postmaster General
U.S. Postal Service

DALLAS DAVIS, Manager/Postmaster
Bulk Mail Center
San Francisco/Richmond, CA

G. ALLEN HICKS, Superintendent
Bulk Mail Center

JOSEPH McHENRY, Acting Manager
Bulk Mail Center

JANE DAVIS, Labor and Personnel
Bulk Mail Center

OTIS WARD, Supervisor
Bulk Mail Center

JOHNNY GREEN, Supervisor
Bulk Mail Center

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES v

OPINIONS BELOW 2

JURISDICTION 2

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 3

STATEMENT OF THE CASE 3

STATEMENT OF FACTS 4

REASONS FOR GRANTING THE WRIT

I. Because Petitioner Was Not Granted A Full and Fair Opportunity to be Heard In His Earlier Action, Res Judicata Does Not Bar Petitioner's Instant Claim 5

II. Petitioner's Due Process Rights Were Violated 10

CONCLUSION 13

INDEX TO APPENDICES

Appendix A	Apple Gate v. Martin Runyon, Postmaster General, et al., Opinion of the Court of Appeals for the Ninth Circuit (March 18, 1996)
Appendix B	Apple Gate v. Martin Runyon, Postmaster General, et al., Court of Appeals for the Ninth Circuit Denial of the Petition for Rehearing, Case No. 94-15771 (June 12, 1996)
Appendix C	Apple Gate v. Martin Runyon, Postmaster General, et al., Opinion of the United States District Court for the Northern District of California (February 16, 1994)
Appendix D	Petitioner's Discovery Request Presented to District Court

TABLE OF AUTHORITIES

Page

CASES

Allen v. McCurry,
449 U.S. 90 (1980)
[66 L.Ed. 2d 308, 101 S.Ct. 411]
. 7

Baltimore & O.R. Co. v. United States,
298 U.S. 349 (1933)
[80 L.Ed. 1209, 56 S.Ct. 797]
. 13

George Moore Ice Cream Co. v. Rose,
289 U.S. 373 (1933)
[77 L.Ed.2 1265, 53 S.Ct. 620]
. 12

Hannah v. Larche,
363 U.S. 420 (1959)
[4 L.Ed.2d 1307, 80 S.Ct. 1502]
. 11

Hatchitt v. United States,
158 F.2d 754 (9th Cir. 1946)
. 10

Haines v. Kerner,
404 U.S. 519, 520 (1972)
[92 S.Ct. 594; 30 L.Ed.2d 652]

Haines v. Kerner,
404 U.S. 519, 520 (1972)
[92 S.Ct. 594; 30 L.Ed.2d 652]
. 9

Hughes v. Rowe,
449 U.S. 5 (1980)
[101 S.Ct. 173; 66 L.Ed.2d 163]
. 10

Hyman v. Regenstein,
258 F.2d 502 (5th Cir. 1958),
cert. denied 359 U.S. 913
[3 L.Ed.2d 575, 79 S.Ct. 589]
. 7

New England Div. Case,
261 U.S. 184 (1922)
[67 L.Ed. 605, 43 S.Ct. 210]
. 13

Wolff v. McDonald,
418 U.S. 539 (1974)
[32 L.Ed.2d 548, 92 S.Ct. 2701]
. 12

UNITED STATES CONSTITUTION

Fifth Amendment 11
Fourteenth Amendment 11

No. 94-15771

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1996

APPLE GATE,
Petitioner,

vs.

MARVIN RUNYON,
POSTMASTER GENERAL, et al.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioner, APPLE GATE, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The opinion of the Court of Appeals for the Ninth Circuit affirming the district court's decision was not certified for publication, but appears in full as Appendix A to this petition. The order denying the Petition for Rehearing appears in full as Appendix B to this petition. The District Court's order is set forth in Appendix C.

JURISDICTION

The Court of Appeals' Opinion in this matter was filed on March 18, 1996. The Court of Appeals' denial of the Petition for Rehearing was issued on June 12, 1996 and is set forth in Appendix B. Therefore this Court's jurisdiction is properly invoked under Title 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the Due Process Clause of the Fifth and Fourteenth Amendments to the United States Constitution.

STATEMENT OF THE CASE

Petitioner filed suit in United States District Court in pro per against his former employer, the Postmaster General. Petitioner claimed that he was wrongfully terminated from his employment with the United States Postal Service. The district court granted summary judgment in favor of respondent.

Petitioner filed an amended complaint in United States District Court based on the Postal Service's failure to rehabilitate him and his wrongful denial of benefits by the Office of Worker's Compensation. The district court granted

respondent's motion for summary judgment; the Ninth Circuit Court of Appeals affirmed.

STATEMENT OF FACTS

Petitioner, APPLE GATE, an African-American male, worked as a mail carrier for the Postal Service for more than six years. During his Postal Service employment, Petitioner was handicapped, as defined in the Rehabilitation Act. Petitioner suffered from both physical and emotional handicaps that limited his major life activities. He applied for disability benefits before he was terminated.

The Postal Service harassed Petitioner and other workers who reported on-the-job injuries by allowing supervisors to inform Petitioner and others that they must cooperate with

Postal Inspectors charging them with fraud. Petitioner was warned that his refusal to cooperate would result in his termination and arrest. Further, Petitioner's request for a leave of absence to recuperate form his on-the-job injury was denied.

Petitioner filed a "whistleblower" complaint against the Postal Service for its failure to comply with government regulations regarding the reporting of on-the-job injuries and its abuse of its employees' rights. He was terminated shortly thereafter.

In addition, Petitioner was falsely implicated in a scheme to commit mail fraud, which caused him severe emotional distress due to his loss of standing among his co-workers and the loss of his livelihood.

REASONS FOR GRANTING THE WRIT

Certiorari should be granted for two reasons. First, Petitioner was not granted a full and fair opportunity to be heard in his earlier action because his requests to present evidence supporting his claim was denied. Therefore, res judicata does not bar his instant claim; he should be allowed to present his case in full. Second, Petitioner's due process rights were violated by the denial of his requests to present evidence.

I. Because Petitioner Was Not Granted A Full and Fair Opportunity to be Heard In His Earlier Action, Res Judicata Does Not Bar Petitioner's Instant Claim

The doctrine of res judicata, which prohibits a party from litigating a

previously adjudicated cause of action, does not mandate a liberal construction of the judgments relied upon for claiming that further litigation is barred. (See Hyman v. Regenstein, 258 F.2d 502 (5th Cir. 1958), cert. denied 359 U.S. 913 [3 L.Ed.2d 575, 79 S.Ct. 589].) Further, the doctrine does not apply when there was not a full and fair opportunity to litigate the issue in the earlier case. (Allen v. McCurry, 449 U.S. 90 (1980) [66 L.Ed. 2d 308, 101 S.Ct. 411].)

Petitioner was not afforded a full and fair opportunity to litigate his earlier action. Petitioner brought his earlier claim for wrongful termination in pro per. His ability to fully present his case was thwarted by both the District Court judge and the government attorney who opposed him.

Petitioner intended to present

witnesses whose testimony would support his first claim. The witnesses were employees of the Postal Service who worked with Petitioner and were aware of the working conditions and allegations made against Petitioner by supervisors. However, the judge did not permit Petitioner to present his witnesses.

Petitioner also sought to introduce a packet of evidence that he had assembled. The packet contained a variety of documents that supported Petitioner's arguments, including a log of unfair employment practices Petitioner had tracked while he was employed by the Postal Service; witness statements he had obtained from other Postal Service employees; and compilations of physical and mental evaluations he had undergone. Although Petitioner attempted to introduce the evidence packet, the judge

refused to examine it.

The Assistant U.S. Attorney representing the government, Beth McGarry, told Petitioner that he had not used the proper procedure to introduce the evidence packet. However, she did not inform him of the procedure he should have used to have his evidence packet considered, despite her knowledge of the relevancy of the information the packet contained. Petitioner's motion for discovery related to these witnesses and evidence is set forth in Appendix D.

The Court has held that pro per petitioners should not be held to the stringent procedural standards applied to attorneys. (Haines v. Kerner, 404 U.S. 519, 520 (1972) [92 S.Ct. 594; 30 L.Ed.2d 652].) In Haines, the Court held that a petitioner is entitled an opportunity to offer proof unless the petitioner's

complaint shows "beyond doubt" that the petitioner could prove no set of facts to support his claim. (Id. at 521; see also Hughes v. Rowe, 449 U.S. 5 (1980) [101 S.Ct. 173; 66 L.Ed.2d 163].) Here, because Petitioner was not afforded a full and fair opportunity to litigate his earlier action, the doctrine of res judicata does not preclude Petitioner's instant action.

Further, the doctrine of res judicata should not be used to work an injustice. (Hatchitt v. United States 158 F.2d 754 (9th Cir. 1946).) The government's attorney, who is claiming that res judicata prohibits Petitioner's claim, was aware of Petitioner's intent to introduce relevant evidence to the court in his earlier action. Nevertheless, the government was a party to prohibiting Petitioner from being

afforded the opportunity to present his complete claim. If the doctrine of res pjudicata is applied to prevent Petitioner from presenting the evidence that supports his claim, an injustice will result. Therefore, the Court should grant Petitioner's writ of certiorari.

II. Petitioner's Due Process Rights Have Been Violated

Due process, guaranteed by the Fifth and Fourteenth Amendments to the Constitution, embodies the various rules of fair play that, through the years, have become associated with different types of proceedings. (Hannah v. Larche, 363 U.S. 420 (1959) [4 L.Ed.2d 1307, 80 S.Ct. 1502].) The right of access to the courts, founded in the due process clause, assures that no person will be denied the opportunity to present to the

judiciary allegations concerning fundamental violations. (Wolff v. McDonald, 418 U.S. 539 (1974) [32 L.Ed.2d 548, 92 S.Ct. 2701].)

Petitioner seeks nothing more than an opportunity to present his claim fully to an unbiased court. Because he was prohibited from fully presenting the evidence supporting his earlier claim, Petitioner has been denied due process.

In order to comply with due process requirements, a proceeding must allow the person who is affected to defend, enforce, and protect his rights through a full hearing. (George Moore Ice Cream Co. v. Rose, 289 U.S. 373 (1933) [77 L.Ed.2 1265, 53 S.Ct. 620].) A full hearing is one in which an ample opportunity is afforded to all parties to make, by evidence and argument, a showing fairly adequate to establish the

propriety of the step asked to be taken. (New England Div. Case, 261 U.S. 184 (1922) [67 L.Ed. 605, 43 S.Ct. 210].) The right to a full hearing includes the right to introduce evidence and have judicial findings based upon it. (Baltimore & O.R. Co. v. United States, 298 U.S. 349 (1933) [80 L.Ed. 1209, 56 S.Ct. 797].)

Petitioner was not afforded a full hearing; he was neither given a chance to present the evidence supporting his case nor to have judicial findings made upon the evidence.

As discussed above, Petitioner intended to present witnesses whose testimony would support his first claim. However, Petitioner was not permitted to present the witnesses. Petitioner also sought to introduce to the court a packet of evidence that contained documents

supporting his arguments. However, the judge refused to examine the evidence packet.

The Assistant U.S. Attorney representing the government, Beth McGarry, told Petitioner that he had not used the proper procedure to introduce the evidence packet. Although she knew the relevancy of the information the packet contained, however, she did not share with him the procedure he should have used to have his evidence considered.

This denial of due process mandates that the Court grant Petitioner's Petition for Writ of Certiorari.

CONCLUSION

Petitioner's due process rights to a full and fair hearing have been violated because he was not allowed to present the evidence that supported his claim.

Because of this denial, Petitioner's earlier action does not bar his claim.

For the reasons set forth above, a writ of certiorari should issue to review the judgment and opinion of the Court of Appeals for the Ninth Circuit in this matter.

DATED: Sept 1, 1996 Richard Dangler

RICHARD DANGLER

Attorney for Petitioner

UNITED STATES COURT OF APPEAL
FOR THE NINTH CIRCUIT

APPLE GATE,
Petitioner,

vs.

MARVIN RUNYON,
POSTMASTER GENERAL, et al.,
Respondents.
_____/

APPEAL from the United States District Court for the Northern District of California (San Francisco).

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the Northern District of California (San Francisco) and was duly submitted.

ON CONSIDERATION WHEREOF, It is now ordered and adjudged by this Court, that the judgment of said District Court in this cause be, and is hereby AFFIRMED.

Filed and entered: March 18, 1996

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

APPLE GATE,
Petitioner,

vs.

MARVIN RUNYON,
POSTMASTER GENERAL, et al.,
Respondents.
_____/

Before: Goodwin, Wiggins, and O'Scannlain, Circuit Judges.

The panel has voted to deny appellant's petition for rehearing and to reject the suggestion for rehearing en banc.

The full court has been advised of the suggestion for rehearing en banc and no active judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for rehearing is denied and the suggestion for rehearing en banc is rejected. No further filings will be accepted in this closed docket.

[Filed June 12, 1996]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

APPLE GATE,
Petitioner,

vs.

MARVIN RUNYON,
POSTMASTER GENERAL, et al.,
Respondents.

_____/

At oral argument on October 8, 1993, this Court granted defendant's motion for summary judgment, finding that re judicata and collateral estoppel combined with the order issues October 9, 1989 in Apple Gate v. Anthony M. Frank, Postmaster General, and the U.S. Postal Service, C-89-0226 CAL (N.D. Cal.), barred any possible available theory of recovery for plaintiff against defendants Runyon and the Postal Service. Plaintiff's attempts to argue new theories or claims regarding the conditions surrounding his termination by the Postal Service cannot be entertained because plaintiff is held to have litigated and lost all of the claims that he could have raised in C-89-0226 CAL regarding his employment and termination. Plaintiff's attempt to state a new ADA claim is insufficient because the ADA does not apply to federal employers, 42 U.S.C. sec. 12111(5)(B)(i). Plaintiff's remedy is the Rehabilitation Act, on which he has already lost in the earlier case.

Though plaintiff's claims against the Secretary of Labor for wrongful denial of FECA benefits were not litigated in the earlier case, defendants are entitled to summary judgment on the merits of this claim. As this Court noted at oral

argument, the Secretary of Labor is immune from, and this Court has no jurisdiction to consider, such suits. Staacke v. United States Secretary of Labor, 841 F.2d 278, 281 (9th Cir. 1988).

After granting defendants summary judgment, this Court gave plaintiff 30 days to file a motion. After reviewing this submission, this Court denies plaintiff's motion for reconsideration.

As a result, this Court ORDERS that judgment be entered in favor of defendants in this case. The clerk of the court shall close this file.

IT IS SO ORDERED.

Dated: 3-16-94 [handwritten]

s/

EUGENE F. LYNCH

United States District Judges

APPLE GATE, IN PRO PER
323-3rd STREET
EUREKA, CA. 95501-0441
(707) 441-1135

DAVID G. KARRO
U.S. ATTORNEY
475 L'ENFANT PLAZA, S.W.
WASHINGTON, D.C. 20260-1136
(202) 268-3033

BETH McGARRY,
ASSISTANT U.S. ATTORNEY
BOX 36055
450 GOLDEN GATE AVENUE
SAN FRANCISCO, CA. 94101
(415) 556-1206

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

APPLE GATE, APPELLANT V. MARVIN RUNYON, POST MASTER F.R.C.P. ET AL. _____/	94-15771 C 92-4593 EFL MOTION FOR DISCOVERY; 26(b)(1)(4) F.O.I.A.

DEFENDANT ATTORNEY BETH McGARRY, INAPPROPRIATELY, HAS MADE REFERENCE TO APPELLANT'S ATTENDANCE AS AN EMPLOYEE WITH THE U.S.__POSTAL SERVICE. THIS CASE IS NOT ABOUT

APPELLANT'S ATTENDANCE. IT IS ABOUT DISCRIMINATION, CIVIL, CRIMINAL, AND EMPLOYMENT RIGHTS ABUSES. IT IS ABOUT HARASSMENT AND ETHNIC AND GENDER-BASED DOUBLE STANDARD APPLICATION AND ENFORCEMENT OF REGULATIONS. APPELLANT REQUESTS DISCOVERY ON THE FOLLOWING:

ROBERT REILLY, MAIL HANDLER AT THE RICHMOND, CA BULK MAIL CENTER, 2501 RYDIN ROAD, RICHMOND, CA, 95804. THIS AMERICAN OF IRISH ANCESTRY HAS BEEN CHASTISED ON AT LEAST TWO OCCASIONS FOR VERBAL ABUSE OF CO-WORKERS AND SUPERVISORS AND HAS AN ATROCIOUS ATTENDANCE RECORD, YET, HE REMAINS EMPLOYED - REQUEST HIS EMPLOYMENT AND ATTENDANCE RECORD, 1984-1994.

MARIA SANDERS, A CLERK AT THE RICHMOND, CA BULK MAIL CENTER, THIS AMERICAN OF HISPANIC ANCESTRY WAS GIVEN WORKERS COMPENSATION AND REHABILITATION SERVICES FOR A DEBILITATING CONDITION WHICH WAS NOT CAUSED BY HER EMPLOYMENT - REQUESTED, HER ATTENDANCE RECORDS AND NATURE/CAUSE OF ILLNESS, 1987-1993.

RICHARD SARRO, MAIL CARRIER AT THE RICHMOND, CA BULK MAIL CENTER, THIS AMERICAN OF EUROPEAN ANCESTRY HAS OFTEN BEEN CITED FOR DISCRIMINATION IN REPRESENTATION OF AMERICANS OF AFRICAN AND LATINO ANCESTRY. SARRO IS THE MAIL HANDLER'S UNION STEWARD AND VICE-PRESIDENT. ALSO, HE HAS AN ATROCIOUS ATTENDANCE RECORD, 1987-1990.

THE LAWS, REGULATIONS, AND STATUTES

CITED IN THESE CONSOLIDATED CASES HAVE BEEN IGNORED AND VIOLATED BY THE U.S. POSTAL SERVICE AND THE DEPARTMENT OF LABOR, ALSO, APPARENTLY BY THE U.S. DISTRICT COURT.

ADDITIONAL DISCOVERY IS REQUESTED ON THE FOLLOWING; JOSEPH McHENRY, AN AMERICAN OF EUROPEAN ANCESTRY DURING HIS SHORT PERIOD AS ACTING-DIRECTOR-MANAGER REVEALED AND REVELED AS EGOMANIACAL, HATEFUL, FASCIST AND TYRANT. HIS REIGN SANCTIONED BY HOSPITALIZED MANAGER DALLAS DAVIS, BEGAN AN ATTACK ON EMPLOYEES INJURED ON THE JOB, PRIMARILY OF WORKERS OF LATIN AND AFRICAN ANCESTRY - BY ANY MEANS NECESSARY. THIS ASSAULT CONTINUED WITH THE RETURN OF DALLAS DAVIS AND THE APPOINTMENT OF G. ALLEN HICKS. ANY SUPERVISOR NOT SUPPORTING THESE ABUSES WAS FORCED TO TRANSFER, RESIGN, OR FORFEIT THEIR SUPERVISORY STATUS- REQUESTED: GRIEVANCES BROUGHT AGAINST McHENRY AND HIS PERFORMANCE RECORD, 1984-1987. OTIS WARD, A SUPERVISOR WITH A HISTORY OF WORKER HARASSMENT. HE ATTEMPTED TO ASSAULT APPELLANT - REQUESTED: UNION GRIEVANCE BROUGHT AGAINST HIM, 1984-1987. ANY INTERPLEADER CONTACTS OR HARD OR SOFT COPY DOCUMENTS. U.S. DISTRICT COURT C 92-4593 EFL, AFFIDAVITS, DEPOSITIONS (ETC) REQUEST DEFENDANTS 1)INVESTIGATE FILE 2)EVIDENCE PACKET. REQUEST

FEDERAL BUREAU OF INVESTIGATIONS
REPORT ON PROBLEMS IN THE U.S. POSTAL SERVICE, 1985-1993. REQUEST MOTION FOR DISCOVERY BE GRANTED.

DATE: 9/11/94/S/ APPLE GATE
IN PRO PER

No. 94-15771

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1996

APPLE GATE,
Petitioner,

vs.

MARVIN RUNYON,
POSTMASTER GENERAL, et al.,
Respondents.

I am employed in the County of Sacramento, State of California and I am a member of the Bar of the Supreme Court of the United States.

On September 1, 1996, I deposited the Petition for Writ of Certiorari in this case in the United States mail located in Sacramento, California, with first class postage prepaid and properly addressed to the Clerk of the Supreme Court of the United States and within the time allowed for filing the petition.

I served additional copies of the petition and proof of service upon the following parties:

United States Solicitor General
Room 5614
Department of Justice
10th St. and Constitutional Ave, NW
Washington, D.C. 20530

U.S. Attorney General
3303 U.S. Courthouse
10th ST. and Constitution Ave, NW
Washington, D.C. 20530

U.S. Attorney General
P.O. Box 683
Ben Franklin Station
Washington, D.C. 20044-0863

Beth McGarry
Assistant U.S. Attorney
450 Golden Gate Avenue
Box 36055
San Francisco, CA 94102

David Karro
U.S. Postal Service
475 L'Enfant Plaza, SW
Washington DC 20260-1136

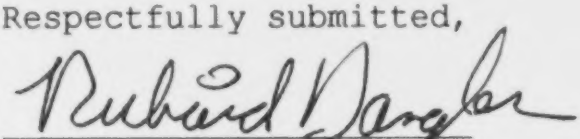
Eugene F. Lynch
U.S. District Court
450 Golden Gate Avenue
San Francisco, CA 94102

United States Court of Appeals
for the Ninth Circuit
121 Spear Street
P.O. Box 193939
San Francisco, CA 94105

I declare under penalty of perjury that the foregoing is true and correct. Executed on September 1, 1996, at Sacramento, Sacramento County, California.

DATED: Sept. 1, 1996

Respectfully submitted,



RICHARD DANGLER